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Filing date: **01/29/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215657
Party	Plaintiff Goya Foods, Inc.
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Date	01/29/2016
Attachments	GFI 2nd Notice Reliance redacted.pdf(794385 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GOYA FOODS, INC.	:	Opposition No.: 91215657
	:	
Opposer,	:	
	:	
v.	:	
	:	
	:	Mark:
	:	Ser. No.: 86060111
GOYOGO FROZEN YOGURT, LLC,	:	
	:	Mark: GOYOGO FROZEN YOGURT OUR
	:	INGREDIENTS YOUR CREATION
Applicant.	:	Ser. No.: 86037364
	:	

OPPOSER'S SECOND NOTICE OF RELIANCE  
PURSUANT TO 37 CFR §2.120(j)

Please take notice that Opposer, Franciscan Vineyards, Inc. pursuant to 37 CFR §2.120(j) is hereby noticing its reliance on the following:

**A. Applicant's responses to the following request for admissions (copies of which are annexed hereto):**

Request No. 23. Admit that yogurt and frozen confections are related.

The Request and Applicant's annexed response are relevant to the similarity/relatedness of the parties' respective goods and services (i.e., the 2<sup>nd</sup> DuPont factor) and the extent of potential confusion (12<sup>th</sup> DuPont factor).



Request No. 35. Admit that the Services offered or sold under the

Mark are capable of being offered and sold to consumers in restaurants.

The Request and Applicant's annexed response are relevant to the similarity/relatedness of the parties' respective goods and services (i.e., the 2<sup>nd</sup> DuPont factor), similarity of trade channels (3<sup>rd</sup> DuPont factor), the conditions under which and buyers to whom sales are made (4<sup>th</sup> DuPont factor), and the variety of goods/services on which the parties' respective marks are used (9<sup>th</sup> DuPont factor), and the extent of potential confusion (12<sup>th</sup> DuPont factor).



Request No. 36. Admit that the Services offered or sold under the

Mark are capable of being offered and sold to consumers in grocery stores.

The Request and Applicant's annexed response are relevant to the similarity/relatedness of the parties' respective goods and services (i.e., the 2<sup>nd</sup> DuPont factor), similarity of trade channels (3<sup>rd</sup> DuPont factor), the conditions under which and buyers to whom sales are made (4<sup>th</sup> DuPont factor), and the variety of goods/services on which the parties' respective marks are used (9<sup>th</sup> DuPont factor), and the extent of potential confusion (12<sup>th</sup> DuPont factor).

Request 38. Admit that the applications being opposed places no limitations on the



retail price or intended retail price at which -Services can be offered or sold to U.S. consumers.

The Request and Applicant's annexed response are relevant to similarity of trade channels (3<sup>rd</sup> DuPont factor), the conditions under which and buyers to whom sales

are made (4<sup>th</sup> DuPont factor), and the extent of potential confusion (12<sup>th</sup> DuPont factor).

Request 40. Admit that the applications being opposed place no limitations or restrictions on the class of customer to whom Applicant can offer or sell



Services.

The Request and Applicant's annexed response are relevant to similarity of trade channels (3<sup>rd</sup> DuPont factor), the conditions under which and buyers to whom sales are made (4<sup>th</sup> DuPont factor), and the extent of potential confusion (12<sup>th</sup> DuPont factor).

Request 41. Admit that the applications being opposed place no limitations or restrictions on the channels of trade through which Applicant can promote or offer



Services to U.S. consumers.

The Request and Applicant's annexed response are relevant to similarity of trade channels (3<sup>rd</sup> DuPont factor), the conditions under which and buyers to whom sales are made (4<sup>th</sup> DuPont factor), and the extent of potential confusion (12<sup>th</sup> DuPont factor).

Request 42. Admit that the applications being opposed place no limitations or restrictions on the retail price or intended retail price at which Applicant can sell



Services.

The Request and Applicant's annexed response are relevant to similarity of trade channels (3<sup>rd</sup> DuPont factor), the conditions under which and buyers to whom sales are made (4<sup>th</sup> DuPont factor), and the extent of potential confusion (12<sup>th</sup> DuPont factor).

Request 43. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of foods.

The Request and Applicant's annexed response are relevant to the fame of Opposer's marks (5<sup>th</sup> DuPont factor); the lack of use or registration by third parties of the term GOYA (6<sup>th</sup> DuPont factor), the extent to which Opposer has a right to exclude others from use of its marks (11<sup>th</sup> DuPont factor), and the extent of potential confusion (12<sup>th</sup> DuPont factor).

Request 45. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of beverages.

The Request and Applicant's annexed response are relevant to the fame of Opposer's marks (5<sup>th</sup> DuPont factor); the lack of use or registration by third parties of the term GOYA (6<sup>th</sup> DuPont factor), the extent to which Opposer has a right to exclude others from use of its marks (11<sup>th</sup> DuPont factor), and the extent of potential confusion (12<sup>th</sup> DuPont factor).

Request 46. Admit that Applicant knew of one or more of Opposer's Marks before adopting or applying to register the marks being opposed.

The Request and Applicant's annexed response are relevant to the similarity of the parties' respective marks (1<sup>st</sup> DuPont factor), the similarity/relatedness of the parties' respective goods and services (2<sup>nd</sup> DuPont factor), the fame of Opposer's marks (5<sup>th</sup> DuPont factor), and the extent of potential confusion (12<sup>th</sup> DuPont factor).

**B. Applicant's responses to the following Interrogatories (copies of which are annexed hereto):**

Interrogatory 5: For each Service identified in response to Interrogatory No. 2, above, set forth for each year since the first date of use of the mark:

- (a) The quantity of yogurt products sold by Applicant under the Mark Being Opposed ;
- (b) The dollar amount of annual sales for each yogurt products sold by Applicant under the Mark Being Opposed; and
- (c) The dollar amount of annual sales for Services rendered by Applicant under the Mark Being Opposed.

The Request and Applicant's annexed response are relevant to the irrelevancy of the 7<sup>th</sup> DuPont factor – actual confusion), and the irrelevancy of the 8<sup>th</sup> DuPont factor – length of time and conditions concerning concurrent use).

Interrogatory 6: For each Service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended by Applicant on advertising and promotion of the Mark Being Opposed.

The Request and Applicant's annexed response are relevant to the irrelevancy of the 7<sup>th</sup> DuPont factor – actual confusion), and the irrelevancy of the 8<sup>th</sup> DuPont factor – length of time and conditions concerning concurrent use).

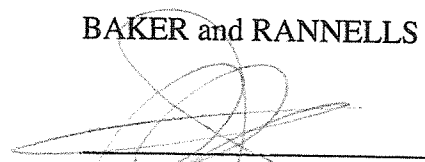
Interrogatory 17: State whether you are aware of any unauthorized third-party use of Opposer's Marks, or any other trademark containing the terms "GOYA" or "GOYO," in conjunction with the offer or sale of any consumer product or service. If so, identify:

- (c) All identifying information about the party or parties using such mark;
- (d) The dates of such use; and
- (e) The geographic area(s) of such use; and
- (f) All persons with knowledge and all documents relating to or relating to any such use.

The Request and Applicant's annexed response are relevant to the fame of Opposer's marks (5<sup>th</sup> DuPont factor); the lack of use or registration by third parties of Opposer's Marks (6<sup>th</sup> DuPont factor), the extent to which Opposer has a right to exclude others from use of its marks (11<sup>th</sup> DuPont factor), and the extent of potential confusion (12<sup>th</sup> DuPont factor).

Respectfully submitted,

BAKER and RANNELLS PA



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 29<sup>th</sup> day of January, 2016 to counsel for Applicant at the following address:

Dennis F Gleason  
Jardim Meisner & Susser PC  
30b Vreeland Rd, Ste 201  
Florham Park, NJ 07039

/John M. Rannells/  
John M. Rannells



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No. 86060111

For the mark: 

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364

For the mark: GoYoGo Frozen Yogurt  
Our Ingredients, Your Creation

Filed August 14, 2013

GOYA FOODS, INC.,

Opposer,

v.

GOYOGO FROZEN YOGURT LLC,

Applicant.

Opposition No. 91215657

**THIRD AMENDED RESPONSES OF  
APPLICANT TO FIRST REQUESTS FOR  
ADMISSION BY OPPOSER**

Pursuant to the Board's October 26, 2015 ruling, GoYoGo Frozen Yogurt, LLC ("GoYoGo Frozen Yogurt" or "Applicant") responds to the first request for admissions by Goya Food, Inc. ("Goya Foods" or "Opposer") as follows:


**INSTRUCTIONS AND DEFINITIONS**

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to the Federal Rules of Civil Procedure, Trademark Trial and Appeal Board and applicable authority.

23. Admit that yogurt and frozen confections are related.


**RESPONSE:** GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms “related” and “frozen confections” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

**THIRD AMENDED RESPONSE:** As modified by the Board’s October 26, 2015 ruling amending “yogurt” to mean “frozen yogurt,” the request to admit is admitted.


35. Admit that the Services offered or sold under the  Mark are capable of being offered and sold to consumers in restaurants.

**RESPONSE:** GoYoGo Frozen Yogurt objects to the terms "consumers" and "restaurants" as vague, ambiguous and undefined; objects to the term "Services" as unintelligible; objects to the request as an improper use of requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the objections raised, Applicant is unable respond.

**AMENDED RESPONSE:** GoYoGo Frozen Yogurt objects to the request as an improper use of a request to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Based on the definitions subsequently provided by counsel for Goya, subject to the objections raised, Applicant admits that frozen yogurt can be sold in restaurants.


36. Admit that the Services offered or sold under the  Mark are capable of being offered and sold to consumers in grocery stores.

**RESPONSE:** GoYoGo Frozen Yogurt objects to the term "grocery stores" as vague, ambiguous and undefined. Based on the definitions subsequently provided by counsel for Goya, subject to the objections raised, Applicant admits that frozen yogurt can be sold to consumers in grocery stores.

38. Admit that the applications being opposed places no limitations on the retail price or intended retail price at which  -Services can be offered or sold to U.S. consumers.

**RESPONSE:** GoYoGo Frozen Yogurt objects to the term "U.S. consumers" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request; and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

**AMENDED RESPONSE:** Based on the subsequent definitions provided by counsel for Goya, Admitted.


40. Admit that the applications being opposed place no limitations or restrictions on the class of customer to whom Applicant can offer sell  Services.

**RESPONSE:** GoYoGo Frozen Yogurt objects to the "class of customer" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground

that it is a compound request and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

**AMENDED RESPONSE:** Based on the subsequent definitions provided by counsel for Goya, Admitted.


41. Admit that the applications being opposed place no limitations or restrictions on

the channels of trade through which Applicant can promote or offer  Services to U.S. consumers.

**RESPONSE:** GoYoGo Frozen Yogurt objects to the terms "channels of trade" and "U.S. consumers" as vague, ambiguous and undefined and objects to the term "Services" as unintelligible. Subject to the objections the Application is unable to respond.

**AMENDED RESPONSE:** Based on the subsequent definitions provided by counsel for Goya, Admitted.

42. Admit that the applications being opposed places no limitations or restrictions on the

retail price or intended retail price at which Applicant can sell  Services.

**RESPONSE:** GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

**AMENDED RESPONSE:** Based on the subsequent definitions provided by counsel for Goya, Admitted.

43. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of foods.

**RESPONSE:** GoYoGo Frozen Yogurt objects to the term "sale of foods" as vague, ambiguous and undefined. Subject to the objection raised, Applicant is unable to reasonably respond as discovery has only begun.

**AMENDED RESPONSE:** Admitted.

45. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of beverages.

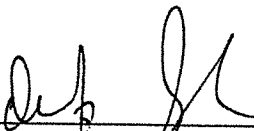
**RESPONSE:** Admitted.

46. Admit that Applicant knew of one or more of Opposer's Marks before adopting or applying to register the marks being opposed.

**RESPONSE:** GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of requests to admit as it refers to "one or more of Opposer's marks"; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objection raised, Applicant is unable to respond.

**AMENDED RESPONSE:** GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of requests to admit as it refers to "one or more of Opposer's marks"; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objections raised, and as understood by Applicant, admitted that GoYoGo Frozen Yogurt admits that it was aware of one or more of Opposer's marks prior to applying to register.

November <sup>30</sup>~~2~~, 2015

By:   
Dennis F. Gleason

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Attorneys for Applicant  
GoYoGo Frozen Yogurt LLC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No. 86060111

For the mark: The logo for GoYoGo Frozen Yogurt, featuring the brand name in a stylized font with a small graphic element.

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364

For the mark: GoYoGo Frozen Yogurt

Our Ingredients, Your Creation

Filed August 14, 2013

GOYA FOODS, INC.,

Opposer,

v.

GOYOGO FROZEN YOGURT LLC,

Applicant.

Opposition No. 91215657

**THIRD AMENDED RESPONSES OF APPLICANT TO FIRST SET OF  
INTERROGATORIES OF GOYA FOODS**

GoYoGo Frozen Yogurt, LLC (“GoYoGo Frozen Yogurt” or “Applicant”) amends its responses to the first set of interrogatories of Goya Foods, Inc. (“Goya Foods” or “Opposer”) based, in part, on the Board’s October 26, 2015 Order as follows:

**INSTRUCTIONS AND DEFINITIONS**

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to or exceed the Federal Rules of Civil Procedure, Rules of the Trademark Trial and Appeal Board or applicable authority.



**INTERROGATORY NO. 5:** For each Service identified in response to Interrogatory No. 2, above, set forth for each year since the first date of use of the mark:

- (a) The quantity of yogurt products sold by Applicant under the Mark being opposed;
- (b) The dollar amount of annual sales for each yogurt products sold by Applicant under the Mark Being Opposed; and
- (c) The dollar amount of annual sales for Services rendered by Applicant under the Mark Being Opposed.

**RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as it is six separate questions and shall be treated as such.

- (a) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "quantity of yogurt" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.
- (b) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "for each yogurt product" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.
- (c) GoYoGo Frozen Yogurt objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, subject to protective order it will provide documents of annual dollar sales.

**AMENDED RESPONSE:**

- (c) Applicant will provide the amount of annual sales subject to a protective order.

**SECOND AMENDED RESPONSE:** Based on January 14 discussions with counsel for Goya, the following information is provided under the provisions for protecting confidentiality of information revealed during Board proceedings, under the designation as "Trade Secret/Commercially Sensitive." Subject to the objections raised and under terms of the standard protective order: (c) Annual dollar gross sales for [REDACTED]

**INTERROGATORY NO. 6:** For each Service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended by Applicant on advertising and promotion of the Mark Being Opposed.

**RESPONSE:** GoYoGo objects to the interrogatory as two separate question as there are two marks and shall be treated as such; objects to the term "Service" as unintelligible. Subject to the objections raised and as understood by Applicant, to the extent that it is maintained, the information will be provided pursuant to the protective order in this matter.

**AMENDED RESPONSE:** Subject to a protective order, Applicant will provide such information to the extent that it is maintained.

**THIRD AMENDED RESPONSE:** Based on the October 26, 2015 ruling of the Board, the following information is provided under the provisions for protecting confidentiality of information revealed during Board proceedings, under the designation as "Trade Secret/Commercially Sensitive." Subject to the objections raised and under terms of the standard protective order Applicant's [REDACTED]

**INTERROGATORY NO. 17:** State whether you are aware of any unauthorized third- party use of Opposer's Marks, or any other trademark containing the terms "GOYA" or "GOYO," in conjunction with the offer or sale of any consumer product or service. If so, identify:

- (a) All identifying information about the party or parties using such mark;
- (b) The dates of such use; and
- (c) The geographic area(s) of such use; and
- (d) All persons with knowledge and all documents relating to or relating to any such

use.

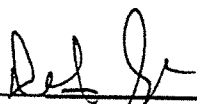
**RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least five separate interrogatories and shall be treated as such; objects to the statement "any other trademark containing the terms 'GOYA'" as suggesting that Applicant's marks contain the term "Goya"; objects to the terms "unauthorized use" and "consumer product or service" as vague and ambiguous; objects to the discovery of "GOYO" as not likely to lead to the discovery of admissible evidence as the term "GOYO" is not part of the subject matter of the opposition. Subject to the objections raised and as understood by Applicant, it does not have knowledge of the use of Goya's marks by others.

- (a) Not applicable
- (b) Not applicable
- (c) Not applicable
- (d) Not applicable

**AMENDED RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least five separate interrogatories and shall be treated as such. Based on the subsequent definitions provided by counsel for Goya, subject to the objections raised and as understood by Applicant, it does not have knowledge of the use of Goya's marks by others.

- (a) Not applicable
- (b) Not applicable
- (c) Not applicable
- (d) Not applicable

November<sup>25</sup>, 2015

By:   
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